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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 183

HENRY W. TAFT AND JULIA W. S. TAFT.
PETITIONERS

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The respondent does not oppose the granting of a writ of certiorari in this case, limited to the second question presented in the petition for a writ of certiorari.

1. The second question presented in the petition is whether, when husband and wife file a joint income-tax return, the limitation on the deduction for contributions to charities to 15 percent of the taxpayer's net income must be computed with reference to the separate net incomes of the husband and wife, or whether it may be computed on their combined net income. As stated in the petition,

the decision of the court below upon this question is in substantial conflict with the decision of the Circuit Court of Appeals for the Third Circuit in *Janney* v. *Commissioner*, 108 F. (2d) 564, certiorari granted April 29, 1940, No. 843 last Term (No. 36 this Term).

2. The first question stated in the petition is whether husband and wife who file a joint income-tax return are a single taxpayer or are two separate and distinct taxpayers. This general question will be answered by the decision of the second question presented in the petition, insofar as it is material to the case at bar.

3. The third question presented in the petition is whether the Board Member erroneously barred certain evidence from the record. The rejected evidence related to the action of the Commissioner of Internal Revenue in allowing, or in failing to disallow, deductions for charitable contributions taken by the taxpayers in their returns for earlier years and apparently computed according to the method held improper by the court below. The refusal to receive this evidence seems clearly correct. This Court has said that even published rulings of the Bureau of Internal Revenue "have none of the force or effect of Treasury Decisions and do not commit the Department to any interpretation of the law." *Helvering* v. *New York Trust Co.*, 292 U. S. 455, 468. And it has never been held that action taken by the Commissioner with respect to an individual taxpayer,

which could not serve to acquaint either Congress or taxpayers generally with the Treasury practice, is entitled to any consideration at all. Compare *Estate of Sanford* v. *Commissioner,* 308 U. S. 39, 52–53. Were the rule otherwise the breadth of the permissible fields of inquiry in tax litigation would place an intolerable burden on the Treasury.

4. The fourth question presented in the petition is whether, under the peculiar circumstances of this case, the husband was, in fact and in substance, the donor of these gifts and hence the "taxpayer" within the meaning of the statute. Petitioners' contention under this head is that "the wife was merely the agent of the husband or the conduit through which his income flowed to charitable uses" (Pet. 14). This question is avowedly peculiar to this case, and there is no reason for this Court to review it. Moreover, the Board's conclusion is amply supported by the evidence to which it refers in its opinion (R. 19–20).

CONCLUSION

For the foregoing reasons it is submitted that if this Court grants the petition it should limit the writ to the second question presented in the petition.

Respectfully submitted.

ROBERT H. JACKSON,
Attorney General.

JULY 1940.

U. S. GOVERNMENT PRINTING OFFICE: 1940